ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems	)	IB Docket No. 95-41
and	)	
DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders To Provide International DBS Service	)	File No. DBS-88-08/94-13DR

OPPOSITION OF
HUGHES COMMUNICATIONS GALAXY, INC.
TO PETITIONS FOR RECONSIDERATION

Gary M. Epstein
John P. Janka
Teresa D. Baer
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 637-2200

May 21, 1996

SUMMARY

The Commission should deny the petitions filed by Columbia Communications Corporation, Orion Network Systems, Inc., and PanAmSat Corporation for reconsideration of the Commission's Report and Order amending its regulatory policies governing domestic fixed satellites and separate international satellite systems. Petitioners fundamentally err in urging the Commission to retain the more relaxed, two-step financial qualification showing that previously applied to them They also are wrong in claiming that the Commission improperly adopted a unified FSS application processing round procedure over the case-by-case processing procedure previously used for separate system applications.

The Commission correctly concluded that there no longer is any reason to subject domestic and separate system FSS satellite operators to different financial qualification standards. Intelsat has essentially eliminated the restrictions that previously hindered separate system operators' ability to raise sufficient financing prior to the completion of the Intelsat consultation process, and that formed the basis for the two-stage showing. Any supposed uncertainties that international FSS operators face therefore simply do not justify the continuation of a two-stage financial showing for FSS applicants seeking to provide international service. Moreover, the Commission's decision to apply its strict financial qualification rules to all FSS applicants is necessary in order to prevent the "warehousing" of orbital locations by speculative applicants in the FSS service -- a concern that applies equally to applicants seeking authority to provide international service. By seeking to continue to apply the two-step approach or to require only the most minimal of a

showing to obtain a waiver of the financial qualification requirement, the petitioners improperly seek to render the Commission's financial requirement utterly meaningless.

Petitioners equally err in claiming that, by adopting the unified application processing policy, the Commission failed to follow proper notice and comment procedures. The Commission's notice of proposed rulemaking in this proceeding fairly apprised the public of the possibility of regulatory changes of the general type that the Commission ultimately adopted. After receiving extensive public comment, the Commission removed all differences between separate international and domestic FSS satellite authorizations. As a logical outgrowth of the removal of those differences, the rationale for processing applications differently disappeared as well, and the Commission appropriately chose to follow for all FSS applications the highly successful processing round procedure instead of the case-by-case approach previously used to process separate international system applications. The unified processing procedure makes good public policy sense and will promote the international competitiveness of the U.S. FSS industry.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems	)	IB Docket No. 95-41
and	)	
DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders To Provide International DBS Service	)	File No. DBS-88-08/94-13DR

OPPOSITION OF
HUGHES COMMUNICATIONS GALAXY, INC.
TO PETITIONS FOR RECONSIDERATION

Hughes Communications Galaxy, Inc. ("HCG") opposes the petitions for reconsideration filed by Columbia Communications Corporation ("Columbia"), Orion Network Systems, Inc. ("Orion"), and PanAmSat Corporation ("PanAmSat") of the Commission's Report and Order amending its regulatory policies governing domestic fixed satellites and separate international satellite systems (the "DISCO Order"). Not surprisingly, Columbia, Orion, and PanAmSat once again argue that the Commission erred in eliminating the more relaxed, two-step financial qualification showing that previously applied to them and by deciding instead to apply its strict, one-step financial qualification showing to all FSS applicants. In addition, Orion and PanAmSat contend that the

Commission improperly adopted its unified FSS application processing procedure, under which all FSS applications will be considered in consolidated processing rounds, rather than on a "case-by-case" basis as the Commission has processed separate system applications in the past. For the reasons set forth below, the petitions are utterly meritless and provide no basis whatsoever for reconsidering an order that appropriately eliminates all artificial regulatory distinctions between "domsats" and "separate systems" and promotes the global competitiveness of all U.S.-licensed FSS systems.[1/]

I. THE COMMISSION PROPERLY DECIDED TO APPLY THE STRICT FINANCIAL QUALIFICATION REQUIREMENT TO ALL FSS APPLICANTS.

In the DISCO Order, the Commission specifically rejected Columbia's, Orion's, and PanAmSat's argument that they should continue to benefit from the relaxed. two-stage financial showing requirement to which they previously were subject, and the Commission accordingly extended to all FSS applicants the one-step financial qualification requirement originally applicable only to domestic FSS applicants.[2/] As the Commission explained, by eliminating the distinction between domestic and separate international satellite systems, the Commission "anticipate[d] increased demand for a wider range of orbit locations."[3/] The Commission consequently concluded that "general application of the one-step financial showing is needed to prevent service delays and to allow the

---

1/ Comsat Corporation and Comsat International Communications (collectively, "Comsat") also filed a Petition for Partial Reconsideration and Immediate Interim Relief seeking interim authority to provide U.S. domestic service using the Intelsat and Inmarsat systems. HCG takes no position here on Comsat's petition.

2/ DISCO Order at ¶¶ 35-43.

3/ Id. at ¶ 41.

maximum number of qualified applicants to go forward."[4/] The petitioners offer absolutely no justification for altering this sound decision.

As the Commission correctly concluded, there no longer is any reason to subject domestic and separate system FSS satellite operators to different financial qualification standards. Contrary to Columbia's claims,[5/] any supposed uncertainties that international FSS operators face simply do not justify the continuation of a two-stage financial showing for FSS applicants seeking to provide international service.[6/] The Commission initially allowed separate systems to satisfy the lower financial standard solely because of the uncertainty once caused by the Intelsat Article XIV(d) consultation process.[7/] That uncertainty no longer exists. Intelsat has made clear that it no longer has any competitive concerns about the licensing of separate international satellite systems and

---

[4/] Id.; see also id. ("The one-step financial showing . . . prevents those entities without the requisite financial resources from tying up scarce orbital resources and precluding qualified applicants from building their proposed systems.").

[5/] See Columbia Petition at i, 6, 8-10.

[6/] None of the "uncertainties" in the international marketplace that FSS operators face -- such as the uncertainty of revenue from foreign routes, the uncertainty of coordination with foreign satellite systems, and the uncertainty regarding the ability to obtain landing rights -- is any more significant than the uncertainties facing deployment of the Big LEO systems in the mobile satellite service. In fact, the uncertainties for FSS systems may be significantly less. The Commission recently adopted the one-step financial test for Big LEO global systems, and there is no reason to apply a weaker standard here. See Amendment of the Commission's Rules To Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5948-54 (1994).

[7/] Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1165 n.152 (1985) ("The only reason for our two-stage approach here is the uncertainty caused by the INTELSAT Article XIV(d) consultation process."), reconsideration, 61 Rad. Reg. 2d (P&F) 649 (1986), further reconsideration, 1 FCC Rcd 439 (1986).

has removed all prior limits on switched services effective January 1997. In short, Intelsat effectively has eliminated the restrictions that previously hindered separate system operators' ability to raise sufficient financing prior to completion of the Intelsat consultation process.

Moreover, as the Commission aptly noted in the DISCO Order, the decision to apply its strict financial qualification rules to all FSS applicants is necessary in order to prevent the "warehousing" of orbital locations by speculative applicants in the FSS service.[8/] When the Commission adopted the one-step financial qualification requirement for domestic applicants in 1985, its express goal was to ensure that satellite operators provide service to the public in an efficient and timely manner, and the Commission consequently required applicants to demonstrate in their applications their financial ability to proceed immediately to construction.[9/] Noting that assignable orbital locations were becoming less available, the Commission explained that adopting a lower standard would improperly allow "some permittees to tie up orbital locations for several years while attempting to bring their financing plans to fruition." and "would prevent qualified applicants from implementing their plans to provide service to the public."[10/] Indeed, the Commission's past experience with underfinanced FSS applicants that were allowed to

---

[8/] DISCO Order at ¶¶ 40-41.

[9/] Licensing Space Stations in the Domestic Fixed-Satellite Service, 58 Rad. Reg. 2d (P&F) 1267, 1268 (1985).

[10/] Id. at 1270.

proceed to licensing without a firm financial showing[11] led inexorably to the conclusion that it is especially important to apply strict financial qualification rules to prevent the "warehousing" of orbital locations by speculative applicants in the FSS service.

The same anti-warehousing concern applies equally to applicants seeking authority to provide international service, despite Columbia's and Orion's claims to the contrary. Columbia and Orion are simply wrong in suggesting that no separate system operator ever has failed to make a full financial showing and commence operations in a timely manner.[12] In fact, the Commission has had to revoke at least one separate system operator's conditional authorization for failing to meet the financial standard, and even Columbia and Orion themselves (among others) have held "separate system" authorizations for at least a decade without commencing operations.[13] If applicants -- regardless of the

---

[11] See, e.g., United States Satellite Systems, Inc., 103 F.C.C.2d 888 (1985); Rainbow Satellite, Inc., 103 F.C.C.2d 848 (1985); Advanced Business Communications, Inc., FCC File Nos. 805-DSS-MP-84, 2187-DSS-MP/ML-84 (released Aug. 29, 1985); see also Norris Satellite Communications, Inc., FCC File Nos. 54-DSS-P/LA-90, 55-DSS-P-9062-SAT-MP/ML-96, 60/61-SAT-MISC-96, 62-SAT-MP/ML-96, 63-SAT-MP-96 (released March 14, 1996) (declaring Ka band orbital assignment granted to applicant following waiver of financial qualification requirements null and void for failure to comply with construction commencement milestone).

[12] Columbia Petition at 12; Orion Petition at 9.

[13] See, e.g., Financial Satellite Corporation, 8 FCC Rcd 803 (1993) (declaring conditional authorization for two separate system satellites null and void for failure to satisfy financial qualification requirements); Columbia Communications Corporation, 1 FCC Rcd 1202 (1986) (conditionally authorizing Pacific Ocean Region separate system satellite to be located at 165° W.L. that ten years after conditional authorization still has not been launched); Orion Satellite Corporation, 101 F.C.C.2d 1302 (1985) (conditionally authorizing two separate system satellites to be located at 37.5° and 47° W.L.), final authorization granted, 6 FCC Rcd 4201 (1991) (granting final authorization for both satellites, but eleven years after conditional authorization satellite to be located at 47° W.L. still has not been launched); see also Letter from John Dunlop, President, International Satellite, Inc., to

(continued...)

region they propose to serve -- are allowed to tie up orbital locations that are needed by others while they seek financing for their proposals, there is, as the Commission correctly concluded, a serious risk that service will be delayed.[14/]

[13/](...continued)
Cheryl A. Tritt, Chief, Common Carrier Bureau, FCC File Nos. CSS-83-004-P(LA), I-P-C-83-073 (Dec. 22, 1992) (relinquishing conditional authorization for two separate system satellites to be located at 56° and 58° W.L. granted seven years earlier because of poor "prospects for commercial success"); Public Notice, "International Satellite and Earth Station Applications Accepted for Filing," Report No. I-6672 (released Apr. 1, 1992) (providing public notice of dismissal of application for the PAS-3 separate system satellite following withdrawal of application that had been pending for two years).

[14/] Orion further claims that applying the strict financial qualification standard to FSS applicants seeking to provide international service is unfair because entities such as self-funded U.S. applicants still have the financial resources to "stockpile" orbital locations to the detriment of operators such as Orion. Orion Petition at ii, 7-8. Orion offers no evidence, however, that any such "stockpiling" by self-funded applicants has occurred. Moreover, those operators remain subject to further restrictions designed to prevent warehousing, such as the requirement that they comply with the due diligence milestones set forth in their applications. Orion's complaint that U.S. licensees may be subject to more stringent licensing rules than Intelsat or foreign-licensed systems is irrelevant for at least two reasons. First, U.S. rules are more strict from a number of perspectives, including 2° spacing, full frequency reuse, and due diligence milestones. Second, Orion's implication that the U.S. should weaken its rules because of international abuses would have the U.S. cede its leadership role in spectrum management and represent a regression from the Commission's highly successful satellite licensing policies.

Repeating PanAmSat's unsuccessful argument in its comments in this proceeding and elsewhere, Columbia contends that the possibility that companies with additional financial resources might leave assigned orbital locations unused provides a basis for capping the number of orbital locations that a single entity may control. Columbia Petition at 17. This proposal makes no more sense than requiring Columbia, Orion, and PanAmSat to divest themselves of their "prime" Atlantic, Pacific, and Indian Ocean Region frequencies so that HCG, GE, and AT&T can improve their ability to compete internationally. Until recently, Columbia, Orion, and PanAmSat have chosen on their own to develop the international market to the exclusion of the domestic market, and there is no reason for the Commission to turn back the clock just to suit their convenience.

Contrary to what Columbia and Orion urge,[15] any other result would significantly impair the global competitiveness of U.S. licensees. Far from "unquantified speculation" as Orion erroneously alleges,[16] there is a growing interest in providing both U.S. domestic and international service, and the Commission's new, unified regulatory policy already is attracting increased demand for a wide range of orbital locations that allow the provision of service to both U.S. domestic and international locations.[17] Particularly as the orbital arc increasingly becomes occupied by foreign satellites capable of broad coverage, it is critical that the Commission maintain policies that will not delay or prevent U.S. FSS licensees from competing effectively on a global scale.[18]

---

[15] See Columbia Petition at 7, 10; Orion Petition at 7.

[16] Orion Petition at 9.

[17] See, e.g., GE American Communications, Inc., FCC File Nos. 18119-SAT-P/LA-96, 20-SAT-P-96 (application for two extended Ku band satellites at 85° and 87° W.L., and one ground spare, for the provision of service in the Western Hemisphere); EchoStar KuX Corporation, FCC File Nos. 82183-SAT-P/LA-96, 83-SAT-P-96 (application for two extended Ku band satellites at 85° W.L. and 91° W.L. for the provision of North American and Caribbean service); Columbia Communications, Inc., FCC File No. 44-SAT-P/LA-96 (application for one hybrid C and Ku band satellite at 172° E.L. for the provision of service to the West Coast of North America, the Pacific Islands, Australia and New Zealand, and portions of Asia); Columbia Communications, Inc., FCC File No. 3-SAT-P/LA-96 (application for one C band satellite at 47° W.L. for the provision of service to North America, Latin America, Western Europe, and portions of Africa).

[18] For the same reason, the Commission should reject Columbia's apparent argument that the Commission should continue to apply the previous two-step approach to existing applications for international service since no requested application locations were in conflict. Columbia Petition at iii, 16-17. Columbia is wrong that no applicants requested orbital locations for international service that conflicted with locations sought by other applicants. For example, PanAmSat initially sought 103° W.L. for its proposed PAS-13 satellite, a location that already had been assigned to GE; PanAmSat subsequently amended that application to request assignment to 93° W.L. instead, but that location since has been assigned to AT&T. In any event, waiting to see if Orion, Columbia, and PanAmSat

(continued...)

Apparently acknowledging the correctness of the Commission's decision to apply the one-step, strict financial qualification requirement to all FSS applicants, the petitioners strain to criticize certain of the details of the required showing. For example, Orion claims that it is unfair to require non-self-funded applicants, such as itself, to demonstrate that they have non-contingent financial commitments, while self-funded applicants may condition the availability of their financial resources on the absence of a "major change in circumstances."[19/] Orion explains that small entities need "financing flexibility" because they, in contrast to larger entities such as HCG, are the ones "who have been on the leading edge of innovation in technology and service offerings."[20/]

Orion has offered absolutely no reason to modify the financial qualification standard. In fact, it is precisely because smaller entities such as Orion have fewer financial resources that the Commission appropriately concluded that it must be especially careful not to "allow[ ] applicants to hold orbital resources to the detriment of others willing and able to go forward immediately."[21/] Moreover, Orion is patently wrong in urging that small

---

[18/](...continued)
ultimately can meet the financial qualification standard will allow orbital locations to lie fallow that other U.S. licensees may be prepared to put to immediate use in an increasingly competitive global satellite marketplace.

[19/] Orion Petition at ii-iii, 10-13.

[20/] Id. at 12.

[21/] DISCO Order at ¶ 40 (footnote omitted). As the Commission noted, "[w]e are sympathetic to small companies without large corporate parents or other access to the hundreds of millions of dollars needed to construct a satellite system. But our primary obligation is to ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible." Id.; see also Licensing Space Stations in the Domestic Fixed-Satellite Service, 58 Rad. Reg. 2d (P&F) at 1271 (continued...)

entrepreneurs should be treated differently because they somehow have a "lock" on innovation and experimentation. While Orion's application appears to be merely an attempt to copy the past efforts of HCG and others, HCG and its affiliates long have been industry leaders in developing new and innovative technologies and satellite uses, such as DIRECTV, Galaxy Latin America, and the GALAXY/SPACEWAY system.

Nor is there any reason to adopt the petitioners' suggestions for modifying the showing needed to obtain a waiver of the financial qualification requirement. In the DISCO Order, the Commission acknowledged that, for those applicants seeking "easterly or westerly orbital locations" in uncongested portions of the arc with limited U.S. domestic coverage, it would entertain waiver requests.[22/] The Commission provided that such requests should include not only the costs of construction, launch, and first-year operating costs, but also "specific information regarding attempts to obtain adequate financing and an explanation as to why such financing could not be obtained."[23/]

PanAmSat asks the Commission just to apply the two-step approach to all orbital locations,[24/] while Columbia asks the Commission to interpret the waiver showing as requiring applicants to do nothing more than make a broad statement as to why the

---

[21/](...continued)
(reasoning as to potential new satellite operators that "those companies are more likely to be successful in first establishing themselves on the basis of offerings that do not require large capital investments," and that "[t]hey can then expand and eventually establish sufficient assets to form the basis for financing their own satellite system.").

[22/] DISCO Order at ¶ 42.

[23/] Id.

[24/] PanAmSat Petition at 6-7.

general "uncertainties" of the satellite business preclude making a full financial showing "prior to the grant of a conditional authorization and the completion of Intelsat consultation."[25/] Accepting either approach would lead to exactly the same -- and the wrong -- result: It would eviscerate the financial qualification standard altogether and render that standard utterly meaningless. Indeed, it would amount to going back to the two-stage process under which applicants would be required to do no more than indicate a potential source of funding. In order to ensure that the public has the widest possible range of satellite services available to it without delay, the Commission should reject petitioners' effort to undermine entirely the strict financial qualification requirement.

Thus, the Commission should decline to reconsider its decision to apply the one-step financial qualification standard to all FSS applicants.

II. THE COMMISSION'S DECISION TO RESOLVE ALL FSS APPLICATIONS IN CONSOLIDATED PROCESSING ROUNDS WAS PROPER.

Orion and PanAmSat also seek reconsideration of the Commission's decision in the DISCO Order to resolve all FSS applications in future "consolidated" FSS processing rounds.[26/] They claim that, by adopting the unified processing policy, the Commission

---

[25/] Columbia Petition at iii, 19-20. Columbia proposes that the Commission allow applicants seeking to provide international service to wait until the international coordination process is completed before requiring a second-stage financial showing. Id. at 18. Columbia's proposal makes no sense. First, it renders the financial showing meaningless because international coordination can take a long time and is in no way a prerequisite to operating. Second, U.S. licensees who propose to provide domestic service are faced with the very same international coordination issues, such as coordinating with Argentina over its soon-to-be-launched Nahuel C satellite, which will provide U.S. domestic coverage from 72° W.L. There is no reason that Columbia should have special treatment simply because it proposes trans-oceanic service.

[26/] DISCO Order at ¶ 44.

failed to follow proper notice and comment procedures and disserved the public interest. In fact, the Commission's adoption of the unified processing policy not only fully comported with established procedure, but also greatly serves the public interest. Accordingly, there is no reason to reconsider the Commission's decision.

Contrary to Orion's and PanAmSat's argument,[27] the Commission validly adopted the unified processing policy by affording adequate notice of, and the opportunity to comment on, all aspects of its proposal to merge its separate system and domestic FSS regulatory policies. The Administrative Procedure Act ("APA") requires that a notice include "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[28] The Commission's DISCO Notice[29] clearly met this standard because it fairly apprised the public of the possibility of regulatory changes of the general type that the Commission ultimately adopted, and because, despite PanAmSat's erroneous conclusion,[30] the use of a unified processing procedure for all FSS satellites clearly is a

---

27/ See Orion Petition at 13; PanAmSat Petition at 1-4.

28/ 5 U.S.C. § 533(b)(3) (1995).

29/ See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 10 FCC Rcd 7789 (1995) ("DISCO Notice").

30/ See PanAmSat Petition at 2.

"logical outgrowth"[31] of the Commission's stated intention to "treat all U.S.-licensed geostationary fixed-satellites under a single regulatory scheme."[32]

In the DISCO Notice, the Commission correctly recognized that the line between separate systems and domestic FSS satellites increasingly had blurred, and it announced plans to reconcile its differing regulatory treatment of these types of satellites to remove outdated regulatory barriers and promote competition. After allowing for (and receiving) extensive public comment and considering its proposed regulatory changes for nine full months, the Commission removed all differences between separate international and domestic FSS satellite regulation by merging the rules that previously applied to the two types of satellite authorizations. Once those substantive differences were removed, separate systems became indistinguishable from domestic satellite systems. The rationale for processing applications differently -- or for treating operators differently in any other way -- accordingly disappeared. The Commission thus faced a simple choice: either process all satellites on the case-by-case basis previously applicable to separate system applications, or follow for all FSS applications the highly successful processing round procedure that the Commission previously had used for domestic FSS applications (by far the majority of all FSS applications). In order to foster competition and accommodate large

---

[31] See South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974) (upholding rule although EPA added features and dropped others because notice fairly apprised public of possibility of changes); see also Fertilizer Institute v. EPA, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (agency may issue rule that does not coincide precisely with proposed rule if final rule is logical outgrowth); Natural Resources Defense Council v. Thomas, 838 F.2d 1224, 1242 (D.C. Cir. 1988) ("germ" of outcome was within original proposal).

[32] DISCO Notice at ¶ 1.

numbers of satellite applications, the Commission necessarily -- and correctly -- chose the latter approach.[33/]

The case law confirms that the Commission provided adequate notice of its choice. For example, in Mt. Mansfield Television v. FCC, the Commission issued a notice of proposed rulemaking stating that the purpose of its proposed prime time access rule was to "increase . . . the opportunity for development of truly independent sources of prime time programming."[34/] The notice did not specifically refer to the possibility of off-network and feature film restrictions in its prime time access rule. Nevertheless, the Second Circuit held that the Commission's notice was adequate, reasoning that the restrictions, which were adopted, were "ancillary prohibitions that are implicit in the purpose of the prime time access rule."[35/] Like the restrictions in Mt. Mansfield Television, the uniform FSS processing procedures are ancillary to the uniform regulatory policy announced in the DISCO Notice, since a primary goal of that notice was to reconcile differences between international domestic and satellite licensees.[36/] Indeed, Orion even concedes that the unified processing round procedure was "one of the issues collaterally impacted by the change" in fundamental satellite regulatory policy.[37/]

33/ Obviously, the case-by-case application processing method would have been unworkable in the areas where there is a great demand for orbital locations.

34/ 442 F.2d 470, 475 (2d Cir. 1971).

35/ Id. at 488.

36/ DISCO Notice at ¶ 1.

37/ Orion Petition at 13.

PanAmSat errs in arguing that two public notices released after the DISCO Notice and soliciting comment on whether the Commission should license satellites in processing rounds[38] somehow constrained the Commission from adopting the unified processing procedure in the DISCO Order.[39] At no time did the International Bureau's public notices express any intention to abandon the Commission's plan "to treat all U.S.-licensed geostationary fixed-satellites under a single regulatory scheme."[40] Rather, as Orion concedes,[41] the notices sought comment on a substantially broader range of issues, and were part of the International Bureau's separate, comprehensive review of its satellite licensing policies. In any event, the Commission clearly must have the regulatory freedom to announce its plans to conduct an ongoing review of its rules and policies at any time without jeopardizing their effectiveness in the interim.[42]

Nor can there be any serious dispute that the unified processing procedure makes good public policy sense and will promote the international competitiveness of U.S. FSS licensees. Orion and PanAmSat urge that using consolidated rounds to process applications to provide international service will disserve the public interest by somehow

---

38/ See Public Notice, "International Action, International Bureau to Review Satellite Licensing Policies," IN-95-25 (Sept. 20, 1995); Public Notice, "Roundtable Date Set on Satellite Licensing Policies," SPB-31 (Nov. 21, 1995).

39/ See PanAmSat Petition at 3-4.

40/ DISCO Notice at ¶ 1.

41/ See Orion Petition at 14.

42/ Cf. Fertilizer Institute, 935 F.2d at 1311 ("An agency must be able to respond flexibly to comments and need not provide a new round of notice and comment every time it modifies a proposed rule.").

delaying the assignment of orbital locations and undermining U.S. licensees' ability to compete on a global scale.[43/] These claims are totally unsubstantiated. Indeed, PanAmSat itself elsewhere has admitted that some of its applications have been pending for five years under the very case-by-case processing procedure that it urges the Commission to retain here.[44/] No processing round has ever taken remotely that long. The Commission's

---

[43/] See Orion Petition at 14-15; PanAmSat Petition at 4-6. Both Orion and PanAmSat also point to jurisdiction-shopping, such as GE's obtaining orbital locations for international satellites from Gibraltar, as an indication that operators believe that the use of consolidated processing rounds for international satellite applications will create unnecessary delay. See Orion Petition at 15; PanAmSat Petition at 6. Whatever the reason that led to GE's filing applications in Gibraltar, it could have had nothing to do with the use of processing rounds for international satellites, since GE's applications were filed well before the release of the DISCO Order.

PanAmSat also claims that the Commission should continue its case-by-case processing approach because the U.S. does not "regulate" the assignment of all orbital locations as PanAmSat claims the Commission does with the assignment of all locations that can provide U.S. domestic coverage. See PanAmSat Petition at 4-5. PanAmSat's argument is based on a mistaken understanding of how orbital locations that can provide U.S. domestic service are assigned, and its argument makes no sense in any event. Foreign governments already use or have sought to register frequencies for their satellites at a number of orbital locations that also are suitable for U.S. domestic coverage. For example, of Latin American countries alone, the ITU Space Network List reveals that Argentina already has laid claim to frequencies at the 85°, 80°, 76°, 72°, and 59° W.L. locations; Mexico has laid claim at the 138° W.L. location; Cuba has laid claim at 97° and 83° W.L.; Colombia has laid claim at 75.4° and 75° W.L.; and Brazil has laid claim at 92°, 87°, 70°, 68°, 65°, and 61° W.L. The Commission simply does not regulate whether foreign administrations file at the ITU for locations that are suitable for U.S. service.

[44/] As PanAmSat explained:

> Processing times for separate system applications have been measured in years, not months. PanAmSat's uncontested separate systems applications have been measured in years, not months. PanAmSat's uncontested separate system application for PAS-5 was filed over five years ago, on November 7, 1990, and it remains pending today. The shortest time from filing to

(continued...)

processing round policy clearly is the most efficient mechanism for assigning orbital locations, as evidenced by the fact that the Commission has just successfully used a processing round to assign international Ka band locations within only seven months after the round closed.[45/] Plainly, ensuring the prompt processing of all FSS applications in a unified manner under a policy expressly designed to promote the global competitiveness of all U.S. FSS licensees will best serve the public interest in general and the interests of the individual applicants in particular.[46/]

In sum, the Commission's decision to use uniform processing rounds to resolve all future FSS applications was proper and in the public interest.

[44/](...continued)

> conditional grant for any of PanAmSat's separate system satellite applications was nine months (PAS-4) and final authority was not granted for that satellite until almost three years later.

PanAmSat Licensee Corporation, Emergency Request for Waiver, FCC File No. 58-SAT-WAIV-96, at 2 n.2 (filed Feb. 2, 1996).

[45/] See Assignment of Orbital Locations to Space Stations in the Ka Band, DA 96-708 (released May 6, 1996).

[46/] In fact, Columbia even suggests that the Commission should encourage the initiation of additional processing rounds by issuing an automatic public notice calling for new applications immediately upon completion of a round. See Columbia Petition at 17-18. While the need for continuous processing rounds is questionable and may burden Commission resources unnecessarily, Columbia clearly acknowledges that processing rounds can address all FSS applications effectively.

CONCLUSION

For the foregoing reasons, the Commission should deny the petitions for reconsideration of the DISCO Order filed by Columbia, Orion, and PanAmSat.

Respectfully submitted,

HUGHES COMMUNICATIONS
GALAXY, INC.

By: Teresa Baer

Gary M. Epstein
John P. Janka
Teresa D. Baer
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 637-2200

May 21, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of May, 1996, caused copies of the foregoing "Opposition of Hughes Communications Galaxy, Inc. to Petitions for Reconsideration" to be served by hand on the following:

Donald Gips
Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 830
Washington, D.C. 20554

Thomas S. Tycz
Chief
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 811
Washington, D.C. 20554

Fern J. Jarmulnek
Chief
Satellite Policy Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 518
Washington, D.C. 20554

Kathleen Campbell
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

and to be served by first class mail, postage prepaid, on the following:

Raul R. Rodriguez
Stephen D. Baruch
David S. Keir
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Thomas J. Keller
Eric T. Werner
Orion Network Systems, Inc.
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301

Richard H. Shay
V.P. Corporate and Regulatory Affairs
April McClain-Delaney
Director of Regulatory Affairs
Orion Network Systems, Inc.
2440 Research Boulevard
Suite 400
Rockville, Maryland 10850

Henry Goldberg
Daniel S. Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

Howard D. Polsky
Vice President, Legal Affairs
Keith H. Fagan
Assistant General Counsel
Neal T. Kilminster
Assistant General Counsel
Comsat Corporation
Comsat International Communications
6560 Rock Spring Drive
Bethesda, Maryland 20817

Richard E. Wiley
Lawrence W. Secrest, III
William B. Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Karen McWhorter